

1
2
3
4
5

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 LAVAR GARY VARNADO,)
9 Petitioner,) 3:11-cv-00325-RCJ-VPC
10 vs.)
11 STATE OF NEVADA, *et al.*,)
12 Respondents.)
/

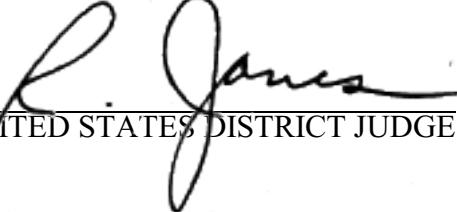
14 This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a
15 state prisoner, is proceeding *pro se*. On August 4, 2011, respondents filed a motion to dismiss the
16 petition. (ECF No. 12.) In response, petitioner filed a motion to strike the motion to dismiss as
17 procedurally improper and requested that the court rule on the motion to strike before requiring him to
18 oppose the motion to dismiss. (ECF No. 14.)

19 Petitioner argues that respondents' motion to dismiss is not properly before the court because the
20 court ordered respondents to file an answer and prohibited motions to dismiss. Petitioner is incorrect.
21 The court authorized respondents to file an answer or "other response" to the petition. (ECF No. 5.)
22 In the Ninth Circuit, the filing of a motion to dismiss is expressly authorized by Habeas Rule 4. Habeas
23 Rule 4 Advisory Committee Notes, 1976 Adoption and 2004 Amendments; *White v. Lewis*, 874 F.2d
24 599, 602-03 (9th Cir. 1989). Accordingly, the court denies petitioner's motion to strike.

25 **IT IS THEREFORE ORDERED** that petitioner's motion to strike (ECF No. 14) is **DENIED**.
26 **IT IS FURTHER ORDERED** that petitioner shall have **fourteen (14) days** from the date of

1 entry of this order within which to file his opposition to the motion to dismiss. Respondents shall have
2 **seven (7) days** after the filing of the opposition within with to file their reply. **The court is not**
3 **inclined to grant any motions for extensions of time absent a showing of extraordinary**
4 **circumstances.**

5 Dated this 11th day of January, 2012.

6
7 
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT JUDGE